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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,156	08/04/2003	Jean Pierre Giraud	63056.TBA	6332

45599 7590 11/04/2004

GREENBERG TRAUIG LLP  
885 THIRD AVENUE  
21ST FLOOR  
NEW YORK, NY 10022

EXAMINER
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SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/634,156

Applicant(s)

GIRAUD, JEAN PIERRE

Examiner

James N Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 17 May 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claim 1, drawn to the disposable container assembly apparatus, classified in class 220, subclass 719.
  - II. Claims 2-3, drawn to the method for maintaining a pre-filled liquid beverage in a disposable container assembly, classified in class 53, subclass 287.

Inventions (I) and (II) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the drinking assembly does not need to be disposed of after use, but could be kept and reused.

2. During a telephone conversation with Barry Schindler on 29 October 2004 a provisional election was made with traverse to prosecute the invention of group (I), claim 1. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-3 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rohlf's US 6,571,981 in view of Connors, JR. et al. US 2003/0066839.

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Rohlfs '981 teaches a hinged beverage cup lid comprising a container (10), integral hinge (18), cover (14) and drinking spout (20).

Rohlfs '981 does not teach the spout having a passive closure system to prevent beverage flow through the spout.

Connors '839 teaches a beverage spout with holes formed to prevent leakage by the use of liquid surface tension formed within the drinking openings, and allowing a beverage to flow upon suction applied by a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spout of Rohlfs '981, providing the spout taught by Connors '839, to prevent beverage from leaking from the spout.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Connors, JR. et al. US 2003/0066839 in view of Rohlfs US 6,571,981.

Connors '839 teaches a beverage spout (20) with holes (34) formed to prevent leakage by the use of liquid surface tension formed within the drinking openings, and allowing a beverage to flow upon suction applied by a user.

Connors '839 does not teach a lid hinged to the sidewall of the container.

Rohlfs '981 teaches a drinking assembly comprising a lid (14) connected to a container (10) sidewall by an integral hinge (18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the beverage cup lid of Connors '839, connecting it to a beverage container by an integral hinge, as taught by Rohlfs '981, motivated by the benefit of preventing the lid from being displaced from the container.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,363,983

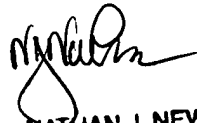
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
11/1/04